IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

S.B. CIVIL MISC. APPEAL No.1745/2004

M/s Govind Dal Mill, Jaipur
Vs.
Chunni Lal

Date of Order :: 20th September, 2006

P R E S E N T

HON'BLE MR. JUSTICE R.S. CHAUHAN
::

Mr. Anuroop Singhi for the appellant.
Ms. Manju Dave for the respondent.

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BY THE COURT : -
Reportable

The appellant has challenged the award dated 21.6.2004 passed by the Workmen's Compensation Commissioner whereby, he has awarded the compensation of Rs.61,236/- alongwith an interest @ 6% upto 21.7.2004 and has further directed that thereafter the

interest shall be paid @ 9% per annum. Moreover, he has imposed penalty of Rs.12,274/- being 20% of the compensation amount.

The brief facts of the case are that the respondent-workman, Chunni Lal (henceforth to be referred to as 'the workman' in short) had filed a claim petition before the learned Commissioner wherein he stated that he was employed as a worker in the appellant's Dal Mill Factory of the appellant. He was assigned the work of placing *chana* and *moong dal* into a machine. According to him, on 18.10.1994, while he was about to leave the work area, his leg was caught in the fan-belt. Consequently, he fell and while falling, his right hand was caught in the machine. Therefore, he suffered grievous injuries. During the course of treatment, his right hand had to be amputated from the shoulder. He was under treatment for almost one and a half years. Because of the accident, his legs also became handicapped. He further claimed that at the time of the accident, he was earning Rs.700/- per month and at that time he was aged 45 years. He further alleged that after the

accident, his work had been changed. He was thereafter required to work as a *chowkidaar.* But on 15.11.1999, he was removed from the service without any notice, and without any cause. While he was working with the appellant, on many occasions he had orally requested for the payment of his compensation. Assurances had been given by the appellant, but no money had been paid to him. Therefore, he sent the notice under Section 10 of the Workmen's Compensation Act, 1923 (henceforth to be referred to as 'the Act' in short) on 24.11.1999. But despite the notice, no compensation was paid. The said claim petition was filed for compensation of Rs.1,50,000/-.

The appellant, while filing the reply, contended that the claim petition is hit by limitation. He further claimed that the accident was caused due to negligence of the worker himself. According to them, immediately after the accident, the appellant had paid Rs.56,000/- for which, the workman and the appellant had entered into an agreement. Since the said amount had already been paid, they were no longer liable to pay the compensation under the Act.

They further denied the fact that he was hired subsequently, as a *chowkidaar*.

The learned Commissioner framed four issues. In order to substantial his case, the respondent filed affidavit wherein, he repeated the same facts as narrated in the claim petition. In order to substantiate their case, the appellant examined one Sanwarmal as a witness.

After hearing both the parties and after going through the affidavits, vide award dated 21.6.2004, the learned Commissioner awarded compensation as stated above. Hence, this appeal before this Court.

Mr. Anuroop Singhi, the learned counsel for the appellant, has vehemently argued that once the compensation had been paid by the employer under an agreement signed by the worker, the employer cannot be held liable under the Act. He has further contended that the claim petition was filed almost after four years of the accident. Therefore, it was hit by

limitation.

On the other hand, Ms. Manju Dave, the learned counsel for the respondent, has argued that the said agreement was not entered by the workman with his free consent. According to the testimony of the respondent himself, he was asked to give his thumb impression on a blank piece of paper during the course of his treatment. Therefore, the said agreement is not binding upon him. Secondly, under Section 17 of the Act, any contract or agreement entered into by a workman to absolve the employer of his liability under the Act, is deemed to be null and void. Therefore, the said agreement is not a valid agreement in the eyes of law.

We have heard both the counsels and have also perused the impugned award.

The Act was enacted by the Parliament with the aim of providing payment by certain classes of employers to their workmen of compensation for injury by accident. Thus, the Act was a beneficial piece of

legislation and enacted for the workmen. Keeping in view that many employers would like to wriggle out of the purview of this Act by entering into an agreement with the workman to relinquish his right of compensation under this Act, Section 17 of the Act states as under :-

> "**Contracting out.-** Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be **null and void** in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act." (Emphasis added)

Thus, according to this Section, any agreement or contract made before or after the coming of this Act into force, whereby a workman relinquishes his right of compensation from the employer, shall be null and void, so far as the agreement, purports to remove or reduce the liability of any person to pay compensation under this Act. Therefore, the agreement entered into by the respondent with the appellant would *ipso facto,* be a null and void agreement. Since the said agreement is contrary to the law, it is unenforceable by the Court. Such an agreement would not only be contrary to Section 17 of the Act, but

also, would be contrary to the provisions of Section 23 of the Indian Contract Act, 1872 (henceforth to be referred to as 'the Contract Act' in short). Section 23 of the Contract Act clearly stipulates that the consideration or object of an agreement is lawful unless it is forbidden by law. Since the object of the present agreement was contrary to Section 17 of the Act, the said object was unlawful. Since the object was unlawful, the agreement itself is void according to Section 24 of the Contract Act. In the case of **Mrs. Kathleen Dias V. H.M. Coria & Sons, [AIR (38) 1951 Cal.513]**, the Hon'ble Calcutta High Court has held that “Section 17 protects the ignorant workman who may be induced by an employer to agree to less compensation or to abandon something to which he is entitled under the Act. If the employer pays of his own accord any amount as *ex gratia* payment to workman or to his dependant he does so at his own risk as he will not be entitled to get set-off or reduction under Section 8 of the amount so paid. Section 17 provides that the workman or his dependant cannot contract himself out”. Therefore, in the present case also, in case the appellant had made any *ex gratia* payment to

the respondent, he has done it at his own peril. Therefore, he cannot be take the benefit of such payment in order to absolve himself of his liability under the Act.

Undoubtedly, the appellant admits that the respondent was injured during the course of employment on 18.10.1994. According to the respondent, he was given verbal assurances by the appellant that he would be paid his rightful dues. However, after the termination of his service, he realized that the appellant had no intention to pay his rightful dues. Therefore, he filed the claim petition after a delay of four years.

Considering the economic power of the appellant and that of the respondent, it is not unusual for the poor workman to go on hoping that the employer would fulfill his promise. The workman has come to the Commissioner only as a last resort. Therefore, the learned Commissioner was justified in condoning the delay and in deciding the case.

In the result, there is no force in this appeal, the same is hereby dismissed.

[R.S. CHAUHAN], J.

Skant/-